IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

Crl.MC.No. 5148 of 2003()

CC.498/2002 of JUDL.MAGISTRATE OF FIRST CLASS COURT, RANNI
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PETITIONER: ACCUSED 1 TO 5
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1. ARAVINDAKSHAN NAIR, AGED 70 YEARS,
S/O. KRISHNAN NAIR, SREERAJALAL COTTAGE,
MAKKAPPUZHA, RANNI.

2. K.N.RAGHAVA KURUP, AGED 75 YEARS,
S/O. NARAYANA KURUP, POMPUZHA, MEKOZHUR P.O.,
PATHANAMTHITTA.

3. JAYASREE S.A., AGED 35 YEARS,
W/O. SUBHAG SUNDER, PONPUZHA HOUSE,
MEKOZHUR P.O., PATHANAMTHITTA.

4. SUSHAMADEVI.R., AGED 45 YEARS,
D/O. K.N.RAGHAVA KURUP, SWATHI, MEKOZHUR P.O.,
PATHANAMTHITTA.

5. SUBHAG SUNDAR R., AGED 41 YEARS,
S/O. K.N.RAGHAVA KURUP, PATHANAMTHITTA

BY ADV. SRI.K.RAMACHANDRAN
SRI.S.SUBHASH CHAND

RESPONDENTS: COMPLAINANT AND STATE
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1. FOREST RANGE OFFICER,
OFRFICE OF THE FOREST RANGE OFFICER,
VADASSERIKKARA.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 29/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL M.C. NO. 5148 OF of 2003

Dated 29th day of November, 2006

ORDER

Petitioners are the accused in C.C.No.498/2002 in the file of the Judicial First Class Magistrate, Ranni with respect to the offences under sections 27(1)(e)(ii) and (iv)of the Kerala Forest Act, 1961 on the allegation that they have destroyed the mud wall which constituted the boundary of the forest land for the purpose of trespassing into the forest land. The petitioners owned private property adjacent to the forest land. The details of the property owned by the petitioners are furnished in the petition. It is also the allegation that a loss of Rs.13,500/- was caused to the Government on account of the above action. The allegation is that about 10 days prior to the date of detection, the petitioners who are the members of the particular family destroyed the mud wall, cleared the bushes and attempted to trespass into the property. It is pointed out that the preliminary report is dated 28-11-95 and the charge sheet was filed on

7-2-2000 and cognizance taken in 2002. There was no further investigation in the matter from 28-11-95 onwards. Hence, the inordinate delay stands unexplained. Evidently, there was no eye witness and the charge sheet has been filed only on the ground that the petitioners being the owners of the neighbouring property might have committed the offence. It is further submitted that petitioners 1 and 2 are persons aged 70 and 75 years respectively. It is absolutely untenable to contend that the above persons have committed the offence alleged.

2. Considering the quantum of punishment provided, bar of limitation would not be attracted. The truthfulness of the allegations can only be examined at the time of trial. All the same, considering the plea of the counsel for the petitioners, petitioners 1 and 2 could be granted exemption from personal appearance. It is directed that if the Petitioners 1 and 2 apply for exemption the same shall be granted. There is no reason to quash the proceedings as such. If the offences are compoundable, the petitioners may be permitted to do so. The petitioners except 1 and 2 shall appear before the court below

on 18-12-2006. The court shall dispose of the matter as early as possible.

The Crl.M.C. is disposed of accordingly.

K.R.UDAYABHANU,JUDGE.

kvm/-